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DIMOCK STRATTON LLP
20 QUEEN STREET WEST SUITE 3202, BOX 102
TORONTO ON M5H 3R3 CA CANADA

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SEP 15 2006

OFFICE OF PETITIONS

In re Application of	:
Robert Walther and Detlef	:
Stoetzel	:
Application No. 10/757,564	:
Filed: January 15, 2004	:
Attorney Docket Number: 1406-	:
23/MBE	:
Title: METHOD OF MANUFACTURING	:
A FUEL FILLER TUBE	:

: DECISION ON TWO PETITIONS
: UNDER 37 C.F.R. §§1.47(A)
: AND 1.181

This is a decision on the petitions concurrently filed on May 30, 2006, pursuant to 37 C.F.R. §§1.47(a) and 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application was filed on January 15, 2004, identifying Robert Walther and Detlef Stoetzel as joint inventors. The declaration which was submitted on filing was not executed by either of the two joint inventors. On April 19, 2004, a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" was mailed, indicating that replacement drawings and a fully executed declaration would be required, along with the surcharge associated with the late filing of the same. The notice set a two-month period for response.

On September 20, 2004, a response was received in the Office, which included a partially executed declaration, the surcharge associated with the late filing of the same, an affidavit, replacement drawings, a petition fee, and a three-month

extension of time (it is noted that September 19, 2004 fell on a Sunday).

A notice of incomplete reply was mailed on October 7, 2004, which did not extend the period for reply, and indicated that the declaration was not fully executed. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on September 20, 2004. A notice of abandonment was mailed on March 27, 2006.

The petition under 37 C.F.R. §1.181:

With the present petition, Petitioner contends that a petition under 37 C.F.R. §1.47(a) was timely submitted, and has submitted a copy of the same, along with a postcard receipt which indicates that a declaration was received in the Office of Initial Patent Examination on September 20, 2004. As such, it is clear that the petition was included in the submission which was received on that date, and subsequently misplaced in the Office.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that the petition under 37 C.F.R. §1.47(a) was timely received, and subsequently misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The petition under 37 C.F.R. §1.47(a)¹:

As stated above, the declaration which was submitted on September 20, 2004 was not executed by joint inventor Walther.

¹ 1A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application, as set forth in 37 C.F.R. § 1.16(e);
- (3) a statement of the last known address of the non-signing inventors;
- (4) either
 - a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
 - b) proof that the non-signing inventor cannot be found or reached after diligent effort;
- (5) a declaration which complies with 37 C.F.R. §1.63.

With the present petition, Petitioner has met requirements (1) - (3) of Rule §1.47(a).

Regarding the fourth requirement above, Petitioner has not submitted adequate proof that diligent efforts have been made to locate the non-signing inventor. Petitioner has set forth that the non-signing joint inventor cannot be reached, and as such, Petitioner is required to establish that a diligent effort was made to locate the non-signing inventor. Petitioner has asserted that a search was performed for the non-signing inventor, and has included a copy of the search results. It is clear that several leads were obtained from the search, but it does not appear that Petitioner followed up on any of these leads. It cannot be asserted that the inventor cannot be found or reached if Petitioner is in possession of a plurality of potentially valid addresses for the non-signing inventor.

Regarding the fifth requirement of Rule 47(a), Petitioner has not submitted a declaration which complies with 37 C.F.R. §1.63. The declaration submitted with the present petition contains non-initialed and non-dated changes by inventor Stoetzel².

For the above reasons, the petition under 37 C.F.R. §1.47(a) must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.47(a)". This is not a final agency action within the meaning of 5 U.S.C. 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁶. All other inquiries

2 See 37 C.F.R. §1.52(c)(1) and MPEP 605.04(a).

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

4 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

5 (571) 273-8300- please note this is a central facsimile number.

6 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

concerning examination procedures or status of the application
should be directed to the Technology Center.



**Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office**